

CUSTOMER NO.: 38107
EXPEDITED PROCEDURE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of) Examiner: S. NAQI
S. BREUER)
Serial No.: 10/541,560) Art Unit: 3736
Filed: July 6, 2005) Confirmation: 5826
For: **METHOD AND**)
APPARATUS FOR)
COMMUNICATING)
WITH A MEDICAL)
DEVICE)
Date of Last Office Action:)
November 12, 2008)
Attorney Docket No.:) Cleveland, OH 44114
PHDE030002US / PKRZ 2 01232) February 12, 2009

PETITION FOR ENTRY OF
AMENDMENT D (AFTER FINAL)
OF JANUARY 9, 2009

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Amendment D was responsive to the Office Action of November 12, 2008. For the reasons set forth in Amendment D, the Office Action of November 12, 2008 was erroneously and prematurely made Final.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I certify that this **PETITION FOR ENTRY OF AMENDMENT D (AFTER FINAL) OF JANUARY 5, 2009** is being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

February 12, 2009
Date

Patricia A. Heim
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The Office Action of November 12, 2008 made a new ground of rejection against claim 16 which was not amended in the preceding Amendment C, and a new ground of rejection against claims 3 and 8 which were not substantively amended in the preceding Amendment C.

Claims 3 and 8 were amended and claim 16 was added in Amendment B of December 13, 2007.

After a third Action Election of Species Requirement and Election, the Examiner issued an Office Action on August 21, 2008 in which claims 3, 8, and 16 were rejected under 35 U.S.C. § 102 as being anticipated by either Sellers or Mault.

On October 17, 2008, the applicant filed Amendment C which requested reconsideration of the rejection of claim 16, made a typographical correction in claim 8, and placed claim 3 in independent form including all of the subject matter of its parent claim (nothing added and nothing deleted).

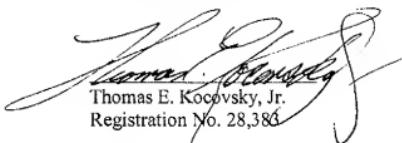
In response to the Amendment C, the Examiner issued an Office Action on November 12, 2008 withdrawing the rejection of unamended claim 16 and the rejections of claims 3 and 8 based on Sellers or Mault, and applied a new ground of rejection.

MPEP 706.07(a) indicates that a second or subsequent Office Action should be made Final **except** where the Examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims nor based on information submitted in an Information Disclosure Statement. In the present situation, because claim 16 was not amended in Amendment C of October 17, 2008, and because claims 3 and 8 were not substantively amended, it is submitted that the new ground of rejection based on Hunsaker in the Office Action of November 12, 2008 was not necessitated by Applicant's Amendment C, nor was it based on information filed an Information Disclosure Statement.

Accordingly, the Finality of the Office Action of November 12, 2008 was clearly erroneous and premature, and must be withdrawn.

An early withdrawal of the Finality of the Office Action of November 12, 2008 and entry of Amendment D of January 9, 2009 is requested.

Respectfully submitted,



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